

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 6th day of September, two thousand and six.

PRESENT:

RALPH K. WINTER
JOSÉ A. CABRANES
ROSEMARY S. POOLER
Circuit Judges

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DIARAMA TRADING CO., d/b/a DTC,

Plaintiff-Counter-Defendant-Appellant,

v.

No. 05-6112-cv

J. WALTER THOMPSON, INC., d/b/a Diamond Promotion Service,
HASENFELD-STEIN, INC., KWIAT, INC., and JULIUS KLEIN
DIAMONDS, INC.,

Defendants-Counter-Claimants-Appellees,

LILI DIAMOND SIMAN-TOV BROS, DE BEERS CONSOLIDATED
MINES LIMITED, DE BEERS CENTENARY AG, and DIAMOND
TRADING COMPANY LIMITED,

Defendants.

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APPEARING FOR APPELLANT: AMY B. GOLDSMITH (George Gottlieb, Marc P. Misthal, *on the brief*), Gottlieb, Rackman & Reisman, P.C., New York, NY

APPEARING FOR APPELLEES: JAMES B. SWIRE (Eleanor M. Lackman, *on the brief*), Arnold & Porter LLP, New York, NY, *for J. Walter Thompson, Inc.*

Allen Green, Kalnick, Klee & Green, LLP, New York, NY, *for Kwiat, Inc.*

Susan Progoff, Ropes & Gray LLP, New York, NY, *for Julius Klein Diamonds, Inc.*

Edward S. Rudofsky, Zane & Rudofsky, New York, NY, *for Hasenfeld-Stein, Inc.*

Appeal from a judgment of the United States District Court for the Southern District of New York (Deborah A. Batts, *Judge*).

UPON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court be and hereby is **AFFIRMED**.

Plaintiff Diarama Trading Co. (“Diarama”) commenced the instant action under the Lanham Act, 15 U.S.C. §§ 1114, 1125, and New York common law principally alleging infringement upon its federally registered “DTC” trademark. Defendants J. Walter Thompson, U.S.A., Inc. (“JWT”), Hasenfeld-Stein, Inc., Kwiat, Inc., and Julius Klein Diamonds, Inc. (collectively, the “Moving Defendants”) brought counter-claims seeking cancellation of Diarama’s trademark registration and a declaration that they have not infringed upon Diarama’s trademark rights. We assume the parties’ familiarity with the underlying facts and procedural history of this case.

The District Court, in an opinion dated September 6, 2005, granted the Moving Defendants’ motion for summary judgment, holding that (1) a third party—namely, Diamond Trading Company (Proprietary) Limited (“Diamond Trading Proprietary”)—had “used the ‘DTC’ acronym as a trade name in a manner sufficient to establish rights superior to Diarama’s,” *Diarama Trading Co. v. J. Walter Thompson U.S.A., Inc.*, No. 01 Civ. 2950, 2005 WL 2148925, at *7 (S.D.N.Y. Sept. 6, 2005); (2) the Moving Defendants were each in privity with Diamond Trading Proprietary and thus were able to invoke the latter’s superior rights to the “DTC” trade name, *id.* at *9-11; and (3) because defendant JWT had not registered the “dtc.com” domain name in bad faith, Diarama had failed to establish federal trademark cyberspiracy under 15 U.S.C. § 1125(d), *id.* at 12-13. As a result of these findings, the District Court declared that

the Moving Defendants had not infringed on any trademark rights of Diarama, cancelled Diarama’s registered “DTC” trademark, and dismissed Diarama’s complaint in its entirety—including its claims against defaulting defendants De Beers Centenary AG and Diamond Trading Company Limited. *Id.* at *14.

Based on our assessment of the parties’ submissions, the applicable case law, and the record on appeal, we conclude that Diarama’s claims are without merit. Although we do not adopt or endorse the District Court’s reasoning in all respects, based on our *de novo* review of the record, we have determined that the District Court reached the correct result in this case. See *Palmer v. Occidental Chem. Corp.*, 356 F.3d 235, 236 (2d Cir. 2004) (“We may affirm on any ground with support in the record, even if it was not the ground relied on by the District Court.”); *Santos v. Murdock*, 243 F.3d 681, 683 (2d Cir. 2001) (same). Accordingly, the judgment of the District Court is hereby **AFFIRMED**.

FOR THE COURT,
Roseann B. MacKechnie, Clerk of Court

By _____